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Paper No. 22

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MAIL

JUN 02 2004

**DIRECTOR OFFICE
TECHNOLOGY CENTER 2600**

In re Application of

James J. Macor

Application No. 09/353,316

Filed: July 14, 1999

For: **COMPUTER AND MOBILE
COMMUNICATION SYSTEM**

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:DECISION ON PETITION
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This is a decision on the petition filed January 14, 2004, based on M.P.E.P. 711.03(c)(II), and pursuant to 37 C.F.R. § 1.181(a), to withdraw the holding of abandonment. This decision is also responsive to the supplemental information filed via facsimile on March 18, 2004.

This application became abandoned for failure to timely file a proper reply to the Final Office action mailed November 13, 2002. A copy of the Final rejection was re-mailed to a new correspondence address on April 29, 2003 but did not reset the period for response. A Notice of Abandonment was mailed on November 18, 2003.

Petitioner alleges that the Final Office action (copy re-mailed on April 30, 2003) was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the instant application reveals that there was no irregularity in the mailing of the Final Office action mailed November 13, 2002 (paper no. 17) since it was mailed to the address of record at that time (Paul Gardon, AVAYA INC., 101 Crawfords Corner Road, Holmdel, NJ). It is further noted that in the instant application, a Change of Address was filed on December 13, 2003 (paper No. 18), exactly one month after the November 13, 2002 mailing date of the Final rejection.

37 C.F.R. § 1.33 states:

(a) The applicant, the assignee(s) of the entire interest (see §§ 3.71 and 3.73) or an attorney or agent of record (see §1.34(b)) may specify a correspondence address to which communications about the application are to be directed. All notices, official letters, and other communications in the application will be directed to the correspondence address or, if no such correspondence address is specified, to an attorney or agent of record (see § 1.34(b)), or, if no attorney or agent is of record, to the applicant, so long as a post office address has been furnished in the application. Double correspondence with an applicant and his attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent be made of record and a correspondence address has not been specified, correspondence will be held with the one last made of record.

In a facsimile filed March 18, 2004, petitioner Scott Lowe submits that a copy of the Final rejection originally mailed November 13, 2002 was re-mailed to the new correspondence address (BIRCH, STEWART, KOLASCH & BIRCH, PO Box 747, Falls Church, VA) on April 29, 2003. Furthermore, the petition filed January 14, 2004 submits copies of docket records from BIRCH, STEWART showing that the Office action mailed April 29, 2003 was not received.

A review of the file finds that the original Final rejection mailed November 13, 2002 was re-mailed to the new attorney at the new correspondence address as a courtesy on April 29, 2003. Absent any indication that the original Final rejection was vacated or that the time period for reply was reset to run from the date of the new mailing, **the time period for response continued to run from the date of the original November 13, 2002 mail date.** A further review of the file finds no evidence that the Final rejection mailed November 13, 2002 was vacated or reset to run from the date of the re-mailing on April 29, 2003.

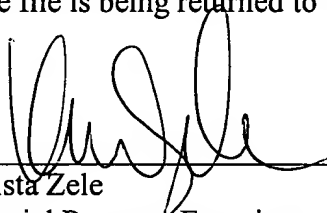
It is noted that the Notice of Abandonment should have properly indicated that the application is abandoned for failure to reply to the Final rejection mailed November 13, 2002. The Office regrets the inconvenience to petitioner.

Accordingly, copies of docket records from BIRCH, STEWART, KOLASCH & BIRCH in regard to non-receipt of the April 29, 2003 Final Office action are insufficient inasmuch as petitioner fails to submit: 1) any evidence that a Change of Correspondence Address and/or Change in Power of Attorney was properly filed prior to the November 13, 2002 mailing of the Final rejection which resulted in an irregularity in the mailing of the Office action; or 2) copies of the necessary statements of non-receipt supported by copies of docket records from the attorney of record at that time (Mr. Paul Gardon) to evidence his non-receipt of the November 13, 2002 Final rejection.

Accordingly, the petition is **DENIED**.

Petitioner may submit a request for reconsideration with **TWO MONTHS** of the date of this decision. Any request for reconsideration must address the deficiencies outlined above. Alternatively, petitioner may want to consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b). Any question regarding the filing of a petition to revive should be directed to the Office of Petitions at 703- 305- 9285.

The file is being returned to the Files Repository.



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